

**ORDER OF THE  
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION  
CREATING EMERGENCY RULES**

The state superintendent of public instruction hereby amends PI 35.05 (12) (a) 2. and creates PI 35.03 (1m) and PI 35.05 (4m), relating to establishing a fee under the Milwaukee Parental Choice Program.

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**ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION**

**Statute interpreted:** Section 119.23 (2) (a) 3., Stats., and SECTION 9139 (4) of the nonstatutory provisions of 2009 Wisconsin Act 28.

**Statutory authority:** Sections 119.23 (2) (a) 3. and (11), 227.11 (2) (a), Stats., and SECTION 9139 (3) of the nonstatutory provisions of 2009 Wisconsin Act 28.

**Explanation of agency authority:**

Section 119.23 (2) (a) 3., Stats., requires the department to, by rule, set the fee charged to private schools participating in the Milwaukee Parental Choice Program (MPCP) at an amount such that the total fee revenue covers the costs of employing one full-time auditor to evaluate the financial information submitted by the private schools.

Section 119.23 (11), Stats., requires the department to promulgate rules to implement and administer the MPCP.

Section 227.11 (2) (a), Stats., gives an agency rule-making authority to interpret the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute.

The Nonstatutory provisions for the Department of Public Instruction, under SECTION 9139 (3) of 2009 Wisconsin Act 28 allows the department to promulgate emergency rules without the finding of emergency to implement this provision.

**Related statute or rule:** N/A

**Plain language analysis:**

2009 Wisconsin Act 28, the 2009-11 biennial budget bill, made several modifications to the Milwaukee parental choice program under s. 119.23, Stats. Several of the modifications require that the department develop rules to implement the statutory provisions. One of those modifications requires the department to develop a rule to establish a nonrefundable fee to cover the cost of employing one full-time DPI auditor for the program. Each private school participating in the program in the 2009-10 school year must pay the fee no later than 30 days after the effective date of the rule. The Act requires emergency rules to be promulgated by September 1, 2009.

The rules:

- Require the department to establish the nonrefundable fee by October 1, 2009 for the 2009-10 school year and by December 1, 2009 for the 2010-11 school year.
- Set the nonrefundable fee by establishing a fee formula.
- Require that the private schools pay the nonrefundable fee to the department by cashier's check by November 1, 2009 for the 2009-10 school year and by February 1, 2010 for the 2010-11 school year.
- Allows the state superintendent to bar a private school from participating in the choice program if the private school fails to pay the nonrefundable fee.

**Summary of, and comparison with, existing or proposed federal regulations:** N/A

**Comparison with rules in adjacent states:**

Illinois, Iowa, Michigan, and Minnesota do not have rules relating to private school voucher programs.

**Summary of factual data and analytical methodologies:**

Because the cost of employing a full-time auditor to evaluate the financial information submitted by the private schools may change from year to year, the rules include a formula whereby a fee will be set annually. The fee should not change significantly from year to year but the formula will allow for flexibility if needed when establishing the fee.

2009 Wisconsin Act 28:

- Requires emergency rules setting the fee to be in place by the first day of the 3<sup>rd</sup> month beginning after the effective date of the Act, or September 1, 2009 [see SECTION 9139 (3)].
- Requires the private schools participating in the program in the 2009-10 school year to pay the fee no later than 30 days after the effective date of the emergency rule promulgated by the department [see SECTION 9139 (4)].
- Requires the private schools (in subsequent years) to pay the fee by February 1 of the school year previous to the school year in which they plan to participate (see s. 119.23 (2) (a) 3., Stats.) .

In accordance with the Act, the emergency rules will be published on September 1, 2009, but will have an effective date provision for the fee payment of October 1, 2009. This was done to give the participating private schools until November 1 to pay the fee for the 2009-10 school year.

The participating private schools will have to pay another fee February 1, 2010, for them to participate in the 2010-11 school year. The fee will be charged February 1 annually thereafter for subsequent school years.

**Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report:** N/A

**Anticipated costs incurred by private sector:** N/A

**Effect on small business:**

The proposed rules will have no significant economic impact on small businesses, as defined in s. 227.114 (1) (a), Stats.

**Agency contact person: (including email and telephone)**

Robert Soldner, Director, School Management Services, (608) 266-7475, [robert.soldner@dpi.wi.gov](mailto:robert.soldner@dpi.wi.gov).

**Place where comments are to be submitted and deadline for submission:**

The department will publish a hearing notice in the *Administrative Register* which will include this information.

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**SECTION 1.** PI 35.03 (1m) is created to read:

PI 35.03 (1m) NONREFUNDABLE AUDITOR FEE. (a) By November 1, 2009, for the 2009-10 school year, a private school participating in the Milwaukee parental choice program shall pay, in the form of a cashier's check, to the department the nonrefundable fee set under s. PI 35.05 (4m).

(b) By February 1, 2010, for the 2010-11 school year, a private school participating in the Milwaukee parental choice program shall pay, in the form of a cashier's check, to the department the nonrefundable set fee under s. PI 35.05 (4n).

**SECTION 2.** PI 35.05 (4m) is created to read:

PI 35.05 (4m) In accordance with s. 119.23 (2) (a) 3., Stats., the state superintendent shall, by no later than October 1, 2009, set the nonrefundable fee to cover the costs of employing one full-time auditor to evaluate the financial information submitted by the private schools under s. 119.23 (7) (am) and (d) 2. and 3., Stats. The fee shall be set as follows:

(a) Divide the cost of the auditor position, as determined by the department, by the number of private schools that submitted the information required under s. PI 35.04 (5) by September 1, 2009.

(b) Round the quotient determined under par. (a) to the nearest whole dollar.

**SECTION 3.** PI 35.05 (4n) is created to read:

PI 35.05 (4n) In accordance with s. 119.23 (2) (a) 3., Stats., the state superintendent shall annually, by no later than December 1, set the nonrefundable fee to cover the costs of employing one full-time auditor to evaluate the financial information submitted by the private schools under s. 119.23 (7) (am) and (d) 2. and 3., Stats. The fee shall be set as follows:

(a) Divide the cost of the auditor position and unfunded prior year auditor costs, as determined by the department, by the number of private schools that submitted the information required under s. PI 35.04 (6) by October 1.

(b) Round the quotient determined under par. (a) to the nearest whole dollar.

**SECTION 4.** PI 35.05 (12) (a) 2., is amended to read:

PI 35.05 (12) (a) 2. Failed to provide the notice or pay the fee required under s. 119.23 (2) (a) 3., Stats., by the date or within the time period specified.

**EXEMPTION FROM FINDING OF EMERGENCY**

Pursuant to SECTION 9139 (3) of the nonstatutory provisions of 2009 Wisconsin Act 28, the Department of Public Instruction is not required to provide evidence that this rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency.

**SECTION 4. EFFECTIVE DATES.**

Except as provided under sub. (1), the rules contained in this order shall take effect upon publication as an emergency rule pursuant to the authority granted by s. 227.24, Stats.

(1) Section PI 35.03 (1m) becomes effective October 1, 2009.

Dated this 1<sup>st</sup> day of September, 2009

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Tony Evers, PhD  
State Superintendent